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7 OPTRICS INC,
8 Plaintiff,
9 v.
10 BARRACUDA NETWORKS INC,
11 Defendant.

Case No. [17-cv-04977-RS](#) (TSH)

ORDER RE: ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL

Re: Dkt. Nos. 232, 285, 296

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13 Before the Court are three motions to file under seal:

- 14 (1) Barracuda's February 25, 2020 Administrative Motion to File Under Seal documents
15 that it filed in connection with its pending Motion for Sanctions (the "Sanctions
16 Motion"), ECF No. 232;
17 (2) Optrics' May 21, 2020 Administrative Motion to File Under Seal documents that it
18 filed in connection with its Opposition to the Sanctions Motion (the "Opposition"),
19 ECF No. 285; and
20 (3) Barracuda's June 4, 2020 Administrative Motion to File Under Seal documents that it
21 filed in connection with its Reply in support of the Sanctions Motion (the "Reply"),
22 ECF No. 296.

23 The Court will proceed to discuss each motion in turn.

24 **A. Barracuda's February 25 Motion**

25 In Barracuda's first motion to seal, it seeks to file under seal materials that it believes
26 Optrics or its non-party e-vendor CloudNine Discovery designated as either "Highly Confidential
27 - Attorneys' Eyes Only" or "Confidential" under the Protective Order in this case.
28 Under the Local Rules of this District, where a party seeks to file under seal any material

1 designated as confidential by another party or a non-party, “[w]ithin 4 days of the filing of the
2 Administrative Motion to File Under Seal, the Designating Party must file a declaration . . .
3 establishing that all of the designated information is sealable.” Civ. L.R. 79-5(e)(1). “If the
4 Designating Party does not file a responsive declaration as required by subsection 79-5(e)(1) and
5 the Administrative Motion to File Under Seal is denied, the Submitting Party may file the
6 document in the public record no earlier than 4 days, and no later than 10 days, after the motion is
7 denied.” *Id.* at 79-5(e)(2).

8 To date, neither Optrics nor CloudNine has filed a responsive declaration to Barracuda’s
9 February 25 motion. Accordingly, Barracuda’s first motion to file under seal is **DENIED**, and
10 Barracuda is **DIRECTED** to file in the public record the above-referenced documents no earlier
11 than June 20 and no later than June 24, 2020.

12 **B. Optrics’ May 21 Motion**

13 In Optrics’ motion to seal, Optrics seeks to file under seal portions of its Opposition and
14 the declaration of Bording Ostergaard in support of its Opposition. *See* ECF No. 285. It asserts
15 that the excerpts contain information designated as confidential by Barracuda and that Barracuda
16 requested that Optrics file the information under seal. *See* Decl. of A. Hamill, ECF No. 285-2.
17 Barracuda filed a declaration, as required by subsection 79-5(d)(1)(A), asserting the bases for
18 sealing most of the portions Optrics seeks to seal. *See* Karineh Khachatourian Decl., ECF No.
19 290. Barracuda does not, however, request sealing of footnote 1 of Optrics’ Opposition. *Id.*

20 For non-dispositive motions such as the Sanctions Motion, only good cause needs to be
21 shown for filing a document under seal. *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 678 (9th
22 Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the ‘good
23 cause’ standard when parties wish to keep them under seal.”). Courts in this district have found
24 that good cause exists to seal confidential business information. *See, e.g., Oracle USA, Inc. v.*
25 *SAP AG*, 2009 U.S. Dist. LEXIS 71365, at *4-5 (N.D. Cal. Aug. 12, 2009) (granting motion to
26 seal where moving party “considered and treated the information contained in the subject
27 documents as confidential, commercially sensitive and proprietary” and where “public disclosure
28 of such information would create a risk of significant competitive injury and particularized harm

1 and prejudice” (citing *Phillips v. General Motors Corp.*, 307 F. 3d 1206, 1211 (9th Cir. 2006)).
2 Optrics’ sealing motion for the most part relates to material containing confidential business
3 information and the motion is narrowly tailored, and as regards to that material sealing is
4 appropriate. However, footnote 1 of the Opposition does not contain confidential business
5 information or information that if disclosed would create a risk of harm to either party; the
6 substance of that text is factual allegations going to the merits of the trademark dispute between
7 the parties. Accordingly, Optrics’ sealing motion is **GRANTED** in part and **DENIED** in part.
8 Optrics **SHALL** file a revised redacted version of its Opposition by June 23, 2020, leaving
9 unredacted footnote 1 of the Opposition.

10 **C. Barracuda’s June 4 Motion**

11 Barracuda’s second motion to seal relates to portions of Barracuda’s Reply as well as
12 exhibits to the reply declaration of Barracuda’s counsel, Karineh Khachatourian. *See* ECF No.
13 296. Barracuda seeks to file under seal materials that it believes Optrics or third-party j2 Global
14 have designated as either “Highly Confidential – Attorneys’ Eyes Only” or “Confidential” under
15 the protective order in this case. Decl. of Nikolaus A. Woloszczuk ¶¶ 2, 3, ECF No. 296-1.
16 Barracuda has no confidentiality interest in the exhibits or Reply excerpts, nor does it request that
17 any of it be sealed.

18 Optrics’ counsel filed a declaration stating that Optrics does not support sealing the
19 portions of the Reply or the exhibit which Barracuda linked to it. Decl. of Andrew G. Hamill ¶ 3,
20 ECF No. 300. j2’s counsel filed a declaration on behalf of j2 stating that j2 is unaware of any
21 confidential information in the Reply at the page and line numbers cited by Barracuda. Decl. of
22 Steve Paparzian ¶ 3, ECF No. 302. However, j2 did assert that Exhibit 7 to the Khachatourian
23 reply declaration contains confidential information. *Id.* ¶ 4. Specifically, it asserts that this
24 document “contains an internal, confidential email discussion regarding IT infrastructure that, if
25 made publicly available, would create a risk of significant competitive injury and/or harm,
26 including by disclosing sensitive details to potential third parties who could use this information to
27 hack and/or otherwise harm J2’s IT infrastructure.” *Id.* And according to j2, it produced the
28 exhibit pursuant to a subpoena issued by Barracuda and authorized by a magistrate judge in the

1 Central District of California on the condition that the documents be produced pursuant to a
2 protective order in that case. *Ibid.* Since those documents were produced under a protective order
3 in another case, there is good cause for that document to be filed under the seal. *See Phillips v.*
4 *GMC*, 307 F.3d 1206, 1213 (9th Cir. 2002) (“When a court grants a protective order for
5 information produced during discovery, it already has determined that ‘good cause’ exists to
6 protect this information from being disclosed to the public by balancing the needs for discovery
7 against the need for confidentiality.”). The rest of the documents do not warrant sealing.
8 Accordingly, Barracuda’s second sealing motion is sealing motion is **GRANTED** in part and
9 **DENIED** in part. Barracuda **SHALL** file an unredacted version of its Reply and unredacted
10 Exhibit 2 to Khachatourian’s declaration by June 23, 2020. Exhibit 7 shall remain under seal.

11 **IT IS SO ORDERED.**

12
13 Dated: June 16, 2020

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15 THOMAS S. HIXSON
16 United States Magistrate Judge

United States District Court
Northern District of California